IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21692 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AJAY RANCHHODBHAI PATEL - Petitioner(s)

Versus

SPECIAL LAND ACQUISITION OFFICER & 1 - Respondent(s)

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Appearance :

MR GM AMIN for Petitioner(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 1,
MR SP HASURKAR A.G.P. for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KSHITIJ R.VYAS

and

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 19/12/2005

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA)

1. Rule. Mr. S.P. Hasurkar learned A.G.P., waives service of rule on

behalf of the respondents. With the consent of the parties the matter is taken up for final hearing today.

1.1. The limited grievance of the petitioner in this petition is that his application under Section 28A of the Land Acquisition Act [for short "the Act"] has been rejected by the Special Land Acquisition Officer who is respondent no. 1 in this petition, solely on the ground that along with the application the petitioner has not forwarded certified copy of the award of the District Court on the basis on which the application has been submitted. The impugned order is dated 10th October, 2005.

2. It is the case of the petitioner that he has land bearing Survey No. 991 situated in the sim of village Shamalkha, Taluka and District Anand. The said land was acquired for Ahmedabad – Vadodara Express Highway. Respondent no. 1 declared Award No. 21/88 on 9th April, 1991 and the rate of compensation was determined at Rs.3/50 paise per square meter. Though the petitioner did not make any application under Section 18 of the Act requesting for reference to the District Court for increasing compensation, other similarly situated land owners preferred application under Section 18 of the Act and in their cases the reference was made. The proceedings before the learned Extra Assistant Judge, were numbered as LAR Case Nos.1485/94 to 1498/94. The learned Judge passed an award on 30th April, 1998 and the rate of compensation for additional Rs.1500 per Are was granted. In view of the same, the petitioner resorted to remedy provided under Section 28A of the Act and made an application to respondent no. 1, which came to be rejected as stated above.

3. Mr. G.M. Amin learned advocate appearing for the petitioner has submitted that the reason advanced by respondent no. 1 for rejecting the

application is against the proposition of law laid down by this Court in several judgments. In support of his say, he has cited a decision rendered by the Division Bench of this Court in the case of **Chitubhai Naranbhai Patel v. Special Land Acquisition Officer, reported in 2005 (1) GLH 88**. In the said decision, the Division Bench has observed as under:

> "Production of certified copy of the award along with application as provided under Order 41 R.1 of Civil Procedure Code (i.e. Copy of decree) is not made compulsory either in the Act or in the Rules made thereunder. Therefore, merely because certified copy of the order was not produced along with the application, such application cannot be rejected if the application is filed within three months from the date of the award. However, the petitioner who is producing certified copy is entitled to get the time for getting certified copy is excluded. There may be cases where parties may not be aware of the exact nature of the award of the court and they have to apply and get a certified copy. In order to provide for such situation proviso is included. The proviso of the Act gives no direction that application under Section 28A should always be accompanied with the certified copy."

4. Thus, as per the decision of the Division Bench, production of the certified copy along with application under Section 28A of the Act is not required. Mr. Amin has also annexed to the petition judgments rendered by the Division Bench which are on the same line. In view of the same, it is obvious that the impugned order passed by respondent no.1 is against the proposition of law laid down by this Court. Hence, this order has to be quashed and set aside. Accordingly, the impugned order is quashed and set aside. The matter is remanded to respondent no.1 for his consideration on merits. It would be open to respondent no.1 to examine all the issues involved in the application including the one of limitation. He shall render the decision within three months from the date of receipt of the writ of this petition.

5. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

[Kshitij R. Vyas, J.]

[Akshay H. Mehta, J.]

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